

### **REMARKS**

Claims 10, 16, 18 and 30-31 are pending. Claims 1-9, 11-15 and 19-29 have been canceled without prejudice to filing the subject matter of these claims in a Continuation or Divisional Application.

All claims have been amended to recite a method of activating a plant. Support for this amendment can be found in claim 8 as originally filed.

Claim 10 has been amended to further define the invention. Support for the range of R being 13-29 carbon atoms can be found by combining the range of 11-29 with the lower limit in the range of 13-21 as found on page 11 of the specification.

Support for the range of R being 15-29 carbon atoms in new claim 30 can be found by combining the range of 11-29 with the lower limit in the range of 15-19 as found on page 11 of the specification.

Support for the specific surfactants listed in claim 31 can be found at page 16, last paragraph to page 19, 3<sup>rd</sup> full paragraph of the specification.

No new matter has been added by way of the above-amendment.

### **PRIOR ART BASED REJECTIONS**

The following prior art based rejections are pending:

(A) Claims 10 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 4,445,546 (DE '546);

(B) Claims 10 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/02451 (WO '451); and

(C) Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '451 as applied to claims 10 and 22.

Applicants respectfully traverse Rejections (A)-(C).

In order to further distinguish the present invention from the cited references, Applicants have amended claim 10 to recite:

A method of activating a plant by applying to a plant a plant-activating composition comprising a plant-activating agent and a fertilizer component, said plant-activating agent is a compound of formula (II),  
$$\text{RCOO}(\text{AO})_n\text{X}^1 \quad (\text{II})$$
wherein R represents an alkyl or alkenyl group having 13 to 29 carbon atoms.

It is clear that this amendment to claim 10 distinguishes the present invention from that of DE '546, since DE '546 teaches:

Lauric acid esters having the formula (I)  $\text{CH}_3-(\text{CH}_2)_{11}-\text{COO}-\text{R}$ , in which R stands for 2-ethyl-hexyl or for isopropyl, are very useful to increase the potency of agrochemical active substances.

It is clear that these lauric acid esters have 12 carbon atoms in the radical which is comparable to the radical "R" in inventive formula (II) except that "R" in inventive formula (II) must have at least 13 carbon atoms.

Furthermore, this amendment to claim 10 clearly distinguishes the present invention from the teachings of WO '451. Applicants turn to the teachings of CA 2,337,535 (CA '535) (attached hereto for the Examiner's review) which is in English and is in the same patent family as WO '451. CA '535 teaches applying a composition of an alkyl polyglycoside (APG) surface active agent and fatty alcohols or partial esters of fatty acids to plants for plant-strengthening and plant rehabilitating effect, see page 3, line 10, and page 4, lines 16-26. CA '535 fails to teach or suggest a method of "activating" a plant as presently claimed.

As the MPEP directs, all the claim limitations must be taught or suggested by the prior art to establish a *prima facie* case of anticipation or obviousness. See MPEP §§ 2131 and 2143.03. In view of the fact that the cited references do not teach or fairly suggest all of the limitations of the presently claimed invention, a *prima facie* case of anticipation or obviousness cannot be said to exist. As such, reconsideration and withdrawal of Rejections A-C are respectfully requested.

New claim 31:

The Examiner will note that new claim 31 is further distinguished from the teachings of WO '451. Applicants turn to the teachings of CA 2,337,535 (CA '535) which is in English and is in the same patent family as WO '451. CA '535 teaches a composition of an alkyl polyglycoside (APG) surface active agent and fatty alcohols or partial esters of fatty acids, see page 4, lines 16-26. The APG surface active agents of CA '535 are obtained as a product of a fatty alcohol with a mono-, oligo- or polysaccharide, see page 5, lines 21-22. It appears that the Examiner is equating the APG surface active agent of CA '535 with the inventive plant activating agent of formula (II). If this is the case, then the fatty alcohol or partial esters of fatty acids of CA '535 would be equivalent to the inventive surfactant. New claim 31 is further distinguished from CA '535, since new claim 31 recites specific surfactants which are not fatty alcohols or partial esters of fatty acids as described in CA '535.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Reg. No. 43,575 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.147; particularly, extension of time fees.

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Respectfully submitted,

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Attachment: CA 2,337,535